

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WP(C).No. 21179 of 2007(U)

OS.297/2006 of MUNSIFF-MAGISTRATE COURT, SASTHAMCOTTA

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PETITIONER:

KARUNAKARA PILLAI,
MADATHIL PADINJETTATHIL, KADAPPA MURI,
MYNAGAPPALLY VILLAGE.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:

1. K.RAVI,
KINARUVILAYIL, (SREE HARI), MYNAGAPPALLY SOUTH
MURI, MYNAGAPPALLY VILLAGE.
2. RAMACHANDRAN PILLAI,
CHANDRA VIHAR, MYNAGAPPALLY SOUTH MURI,
MYNAGAPPALLY VILLAGE.
3. SREE MANNOORKAVU DEVIKSHETHRAM,
MYNAGAPPALLY SOUTH, MYNAGAPPALLY VILLAGE.
4. VISWANATHAN PILLAI,
VISWABHAVANAM, KADAPPA MURI, MYNAGAPPALLY VILLAGE.
5. N.V.NARAYANAN NAIR,
SARASWATHI BHAVANAM, THEKKAN MYNAGAPPALLY,
MYNAGAPPALLY VILLAGE.
6. ADVOCATE S.REGHUKUMAR,
THE RETURNING OFFICER, MANOORKAVU DEVIKSHETHRAM,
MYNAGAPPALLY SOUTH MURI.

BY ADV. SRI.S.GOPAKUMARAN NAIR FOR R1
DR.ABRAHAM P.MEACHINKARA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1. COPY OF THE PLAINT DT. NIL IN O.S. NO.297/06 BEFORE THE MUNSIFF'S COURT, SASTHAMCOTTA
- EXT.P2. COPY OF THE PETITION I.A. NO.127/2007 DT. NIL BEFORE THE MUNSIFF'S COURT, SASTHAMCOTTA
- EXT.P3. COPY OF THE PETITION I.A. NO.417/2007 DT. 13.4.2007 BEFORE THE MUNSIFF'S COURT, SASTHAMCOTTA
- EXT.P4. COPY OF THE OBJECTION DT. NIL BEFORE THE MUNSIFF'S COURT, SASTHAMCOTTA
- EXT.P5. COPY OF THE ORDER DT.28.6.07 IN I.A. NO.417/2007 IN O.S. NO.297/06 BEFORE THE MUNSIFF-MAGISTRATE COURT, SASTHAMCOTTA

RESPONDENT'S EXHIBITS:

- EXT.R1(a). ELECTION RESULTS OF THE TWO KARAS PUBLISHED BY THE RETURNING OFFICER

/TRUE COPY/

PA TO JUDGE.

M.N.KRISHNAN, J.

W.P.(C). NO. 21179 OF 2007

Dated this the 6th day of November, 2007

J U D G M E N T

This writ petition is filed against the order of the Munsiff, Sasthamcotta in I.A. No.417/2007 in O.S. No.297/2006. There were two plaintiffs in the suit and when their nomination to contest the election of Sree Mannookavu Devi Temple was rejected, they came forward with the present writ petition. During the pendency of the proceedings, the court directed the person holding the election, namely defendant No.4, not to declare the results of two vacancies, until further orders. Thereafter the 1st plaintiff has filed an application as I.A. No.127/2007 for declaring the results, which is still pending now. In the meanwhile, the additional 10th defendant in the suit moved an application as I.A. No.417/2007 to declare his result. The court held that since he will be the next person who has secured the maximum number of votes on the death of plaintiff No.2, he is directed to be declared as a successful candidate. It has to be understood that the scope of the direction of the Munsiff not to declare the results of two vacancies was just for the purpose of

finding out the suitability or otherwise of the plaintiffs to contest the election. Just because a person is dead, the court cannot jump into the conclusion that the results have to be declared on the next man. Therefore the order under challenge suffers from the following infirmities:

(i) The court has not even seen the byelaws whereby the selection process is held before passing an order.

(ii) The court has not considered the application of the plaintiff at all for declaring the results.

2. So without adjudicating the right of the party, who has come to the court to ventilate his grievance, the court has passed an order declaring the selection of the 10th defendant as a successful candidate. This is irregular and cannot be entertained.

Therefore, the order under challenge is set aside and the matter is remitted back to the court below with the following directions:

(i) The court shall consider Ext.P2 application along with the present application as well, after seeing the byelaws and pass an order whereby it will have an impact on both the vacancies that are kept vacant.

(ii) The court should also find out from the bylaws what is the procedure that is contemplated in a case of this nature and suppose the system is that the candidates are declared elected on the basis of the maximum number of votes obtained by them or on the present order and suppose if the 10th defendant is the person who has secured maximum votes and there is no other disqualification for him, then naturally the court is bound to consider his entitlement as a winner in the election. I also direct that the court below should consider and dispose of the matter, within a period of one month from today.

With these directions, the writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

vps

